

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JENNIFER NAKAO
4768 Chestnut Glen Drive
Murray, UT 84107
Certified Public Accountant No. CPA 82141

Respondent.

Case No. AC-2012-19


OAH No. 2012030008

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 27, 2012.

It is so ORDERED September 27, 2012.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
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7 *Attorneys for Complainant*

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **JENNIFER NAKAO**
4768 Chestnut Glen Drive
13 Murray, UT 84107
Certified Public Accountant License
14 No. CPA 82141

15 Respondent.

Case No. AC-2012-19

OAH No. 2012030008

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
20 Accountancy. She brought this action solely in her official capacity and is represented in this
21 matter by Kamala D. Harris, Attorney General of the State of California, by Anahita S. Crawford,
22 Deputy Attorney General.

23 2. Respondent Jennifer Nakao (Respondent) is represented in this proceeding by
24 attorney Christopher B. Sullivan whose address is: Snell & Wilmer LLP, 15 West South Temple,
25 Suite 1200, Salt Lake City, UT, 84101.

26 3. On or about November 24, 2001, the California Board of Accountancy issued
27 Certified Public Accountant License No. CPA 82141 to Jennifer Nakao (Respondent). The
28

1 Certified Public Accountant License was in full force and effect at all times relevant to the
2 charges brought in Accusation No. AC-2012-19 and will expire on May 31, 2013, unless
3 renewed.

4 JURISDICTION

5 4. Accusation No. AC-2012-19 was filed before the California Board of Accountancy
6 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 January 10, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

9 5. A copy of Accusation No. AC-2012-19 is attached as exhibit A and incorporated
10 herein by reference.

11 ADVISEMENT AND WAIVERS

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. AC-2012-19. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

16 7. Respondent is fully aware of her legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
18 her own expense; the right to confront and cross-examine the witnesses against her; the right to
19 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
20 compel the attendance of witnesses and the production of documents; the right to reconsideration
21 and court review of an adverse decision; and all other rights accorded by the California
22 Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 CULPABILITY

26 9. Respondent understands and agrees that the charges and allegations in Accusation
27 No. AC-2012-19, if proven at a hearing, constitute cause for imposing discipline upon her
28 Certified Public Accountant.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest those charges.

11. Respondent agrees that her Certified Public Accountant is subject to discipline and she agrees to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

12. Respondent Jennifer Nakao has never been the subject of any disciplinary action with the CBA. She is admitting responsibility at an early stage in the proceedings. The licensee has cooperated with the California Board of Accountancy's investigation, other law enforcement or regulatory agencies, and/or the injured parties. There has also been the passage of considerable time since an act of professional misconduct occurred with no evidence of recurrence or evidence of any other professional misconduct. Convincing proof of mitigation as well as other relevant information have been considered.

CONTINGENCY

13. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

1 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
2 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
3 effect as the originals.

4 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
5 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
6 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
7 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
8 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
9 writing executed by an authorized representative of each of the parties.

10 16. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the CBA may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Certified Public Accountant License No. CPA 82141
15 issued to Respondent Jennifer Nakao (Respondent) is revoked. However, the revocation is stayed
16 and Respondent is placed on probation for three (3) years on the following terms and conditions.

17 1. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local
18 laws, including those rules relating to the practice of public accountancy in California.

19 2. **Submit Written Reports.** Respondent shall submit, within ten (10) days of
20 completion of the quarter, written reports to the CBA on a form obtained from the CBA. The
21 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
22 verification of actions as are required. These declarations shall contain statements relative to
23 Respondent's compliance with all the terms and conditions of probation. Respondent shall
24 immediately execute all release of information forms as may be required by the CBA or its
25 representatives.

26 3. **Personal Appearances.** Respondent shall, during the period of probation, appear in
27 person or telephonically at interviews/meetings as directed by the CBA or its designated
28 representatives, provided such notification is accomplished in a timely manner.

1 4. **Comply With Probation.** Respondent shall fully comply with the terms and
2 conditions of the probation imposed by the CBA and shall cooperate fully with representatives of
3 the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
4 with probation terms and conditions.

5 5. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice
6 investigation of the Respondent's professional practice. Such a practice investigation shall be
7 conducted by representatives of the CBA, provided notification of such review is accomplished in
8 a timely manner.

9 6. **Comply With Citations.** Respondent shall comply with all final orders resulting
10 from citations issued by the Board of Accountancy.

11 7. **Violation of Probation.** If Respondent violates probation in any respect, the CBA,
12 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry
13 out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is
14 filed against Respondent during probation, the CBA shall have continuing jurisdiction until the
15 matter is final, and the period of probation shall be extended until the matter is final.

16 8. **Completion of Probation.** Upon successful completion of probation, Respondent's
17 license will be fully restored.

18 9. **Supervised Practice.** Prior to accepting an engagement to issue any financial
19 statement to a California entity, Respondent shall submit to the CBA or its designee for its prior
20 approval a plan of practice that shall be monitored by another CPA or PA who provides periodic
21 reports to the CBA or its designee about any financial statement reports issued by Respondent to
22 any California entity. Respondent shall pay all costs for such monitoring.

23 10. **Active License Status.** Respondent shall at all times maintain an active license
24 status with the CBA, including during any period of suspension. If the license is expired at the
25 time the CBA's decision becomes effective, the license must be renewed within 30 days of the
26 effective date of the decision.

27 11. **Cost Reimbursement.** Respondent shall reimburse the CBA \$6,561.31 for its
28 investigation and prosecution costs. The payment shall be made as determined by the Board.

1 ACCEPTANCE

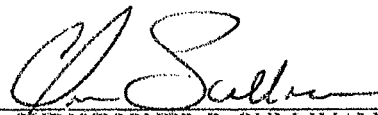
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Christopher Sullivan. I understand the stipulation and the effect it
4 will have on my Certified Public Accountant. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the California Board of Accountancy.

7 DATED: Sept 4, 2012


JENNIFER NAKAO
Respondent

9
10 I have read and fully discussed with Respondent Jennifer Nakao the terms and conditions
11 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
12 its form and content.

13 DATED: 9/4/12


CHRISTOPHER B. SULLIVAN
Attorney for Respondent


15
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the California Board of Accountancy of the Department of
19 Consumer Affairs.

20 Dated: 9 4 . 12

21 Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 JANICE K. LACHMAN
Supervising Deputy Attorney General

24 
25 ANAHITA S. CRAWFORD
26 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2012-19

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2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
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12 In the Matter of the Accusation Against:

Case No. AC-2012-19

13 **JENNIFER NAKAO**
4768 Chestnut Glen Drive
Murray, UT 84107

ACCUSATION

14 Certified Public Accountant License No.
CPA 82141

15 Respondent.
16

17 Complainant alleges:
18

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about November 24, 2001, the California Board of Accountancy issued
23 Certified Public Accountant License Number CPA 82141 to Jennifer Nakao (Respondent). The
24 Certified Public Accountant License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on May 31, 2013, unless renewed.

26 //

27 //

28 //

1 **JURISDICTION**

2 3. This Accusation is brought before the California Board of Accountancy (CBA),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 5109 states that:

6 The expiration, cancellation, forfeiture, or suspension of a license, practice
7 privilege, or other authority to practice public accountancy by operation of law or by
8 order or decision of the board or a court of law, or the voluntary surrender of a license
9 by a licensee shall not deprive the board of jurisdiction to commence or proceed with
any investigation of or action or disciplinary proceeding against the licensee, or to
render a decision suspending or revoking the license.

10 **STATUTORY PROVISIONS**

11 5. Section 5100 states, in part:

12 After notice and hearing the board may revoke, suspend, or refuse to renew
13 any permit or certificate granted under Article 4 (commencing with Section 5070) and
14 Article 5 (commencing with Section 5080), or may censure the holder of that permit
or certificate for unprofessional conduct that includes, but is not limited to, one or any
combination of the following causes:

15 ...

16 (h) Suspension or revocation of the right to practice before any
governmental body or agency.

17 ...

18 (l) The imposition of any discipline, penalty, or sanction on a registered
19 public accounting firm or any associated person of such firm, or both, or on any other
20 holder of a permit, certificate, license, or other authority to practice in this state, by
the Public Company Accounting Oversight Board or the United States Securities and
Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or
other federal legislation.

21 **COST RECOVERY**

22 6. Section 5107, subsection (a), states:

23 The executive officer of the board may request the administrative law judge,
24 as part of the proposed decision in a disciplinary proceeding, to direct any holder of a
25 permit or certificate found to have committed a violation or violations of this chapter
26 to pay to the board all reasonable costs of investigation and prosecution of the case,
including, but not limited to, attorneys' fees. The board shall not recover costs
incurred at the administrative hearing.

27 //

28 //

FIRST CAUSE FOR DISCIPLINE

(Suspension of Right to Practice before Governmental Body/Agency)

7. Respondent is subject to disciplinary action for unprofessional conduct under section 5100, subsection (h), in that on or about February 17, 2010, the Public Company Accounting Oversight Board (PCAOB), a governmental body or agency, issued final disciplinary sanctions against Respondent, barring her from being an associated person of a registered public accounting firm for a period of one year. The circumstances are as follows:

On or about February 17, 2010, PCAOB entered an *Order Making Findings and Imposing Sanctions* ("Order") against Respondent Jennifer Nakao. Respondent consented to entry of the Order without admitting or denying the findings therein, except as to the Board's jurisdiction over Respondent and the subject matter of the proceedings, which she admitted.

At all relevant times, Respondent was an associated person of the registered public accounting firm of Grant Thornton, LLP. In February 2002, Grant Thornton, LLP became the independent auditor for iMergent, Inc. Respondent began working on the iMergent audit from 2002-2003 as the engagement senior. She was promoted in 2003 and from 2004-2005, worked as the manager on the iMergent engagement. She remained a member of the iMergent engagement team until Grant Thornton, LLP was terminated as the company's independent auditor in October 2005.

In its Order, PCAOB found that Respondent had violated certain PCAOB auditing standards in regard to auditing the financial statements of iMergent, Inc. for the year 2004, while Respondent was the manager on the iMergent engagement. PCAOB found that most of iMergent's FY 2004 revenue came from sales of software licenses to customers who were given 24-month Extended Payment Term Arrangements ("EPTA") to finance their purchase. Respondent understood that iMergent's historical collection experience for sales was its primary basis for concluding the FY 2004 EPTA sales were probable of collection and fixed or determinable. However, Respondent 1) failed to ensure that the engagement team sufficiently tested management's representations of its historical collection experience for EPTA sales; 2) failed to ensure sufficient procedures were performed to test or assess the reasonableness of

1 certain EPTA collection rates disclosed by iMergent in the footnotes to its FY 2004 financial
2 statements and its filings with the Securities and Exchange Commission; and 3) failed to ensure
3 the performance of sufficient procedures to assess the reasonableness of the June 30, 2004
4 allowance for doubtful accounts balance.

5 As a result of its findings, PCAOB ordered that Respondent Jennifer Nakao was barred
6 from being an associated person of a registered public accounting firm for one year from the date
7 of its Order.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Imposition of Discipline by PCAOB)**

10 8. Respondent is subject to disciplinary action for unprofessional conduct under section
11 5100, subsection (l) in that on or about February 17, 2010, PCAOB made findings and imposed
12 final disciplinary sanctions against Respondent, as an associated person of a registered public
13 accounting firm, as more fully set forth in paragraph 7, above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the California Board of Accountancy issue a decision:

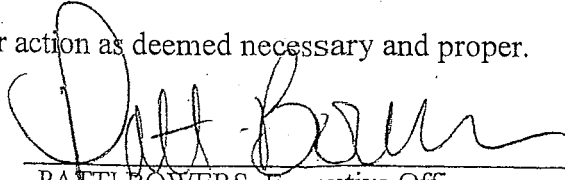
17 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
18 Accountant License Number CPA 82141, issued to Jennifer Nakao;

19 2. Ordering Jennifer Nakao to pay the California Board of Accountancy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 5107;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: December 23, 2011

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27 
28 PATTI BOWERS, Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant